

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 29 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0090-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
STANFORD LAMAR FERRELL,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR 200700791

Honorable Wallace R. Hoggatt, Judge

REVIEW GRANTED; RELIEF DENIED

Stanford L. Ferrell

Florence
In Propria Persona

H O W A R D, Chief Judge.

¶1 After a jury trial, petitioner Stanford Ferrell was convicted of two counts of child molestation and sentenced to consecutive, mitigated prison terms of fifteen years on each count. In separate appeals, we affirmed his convictions and sentences, *State v. Ferrell*, No. 2 CA-CR 2008-0411 (memorandum decision filed May 14, 2010), and the trial court’s denial of his motion for a new trial, *State v. Ferrell*, No. 2 CA-CR 2009-0313-PR (memorandum decision filed Jul. 30, 2010). In this petition for review, Ferrell challenges the trial court’s order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 As the trial court noted in its review of this case’s history, appointed counsel filed a petition in which he stated he had reviewed the record but was “unable to find any claims for relief to raise in [the] post-conviction proceeding,” and counsel asked the court to “search the record for fundamental error pursuant to” A.R.S. § 13-4035 and *State v. Powell*, 5 Ariz. App. 51, 423 P.2d 127 (1967), and permit Ferrell to file a pro se petition. The court granted the latter request, and Ferrell filed a supplemental petition in which he raised claims of ineffective assistance of trial counsel and newly discovered evidence and asserted his right to a fair trial had been violated by the introduction of perjured testimony.¹

¹The trial court correctly denied Ferrell’s request for fundamental error review. First, A.R.S. § 13-4035, which had required an appellate court to review the record on direct appeal for fundamental error, was repealed in 1995. 1995 Ariz. Sess. Laws, ch. 198, § 1. Second, as the court correctly observed in its minute entry order denying

¶3 The trial court denied relief without an evidentiary hearing in a thorough, eleven-page minute entry in which the court identified the claims Ferrell had raised as clearly as possible and correctly evaluated and resolved them. Contrary to Ferrell’s argument on review, the court did not mischaracterize or omit certain claims, nor did it identify the claims Ferrell had raised in a manner designed “to suit [its] needs” and engender a specific outcome. Rather, the court acknowledged the difficulty of identifying precisely the claims Ferrell was attempting to raise, noting in a footnote it had based its categorization and identification of the claims on Ferrell’s own list of the issues in his reply to the state’s response to his petition. The court prefaced its order with the statement that it had conducted a complete review of the record, despite the fact that Ferrell was not an “of-right” defendant for purposes of Rule 32, specifying it had reviewed the transcripts of the trial and all pre-trial and post-trial hearings. The court added it remembered the case “relatively well.” The court identified those claims that essentially reiterated issues Ferrell had raised in his motion for new trial and that therefore were precluded under Rule 32.2. It then addressed the remaining claims. No purpose would be served by restating the court’s ruling; instead, we adopt it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶4 On review, Ferrell has not sustained his burden of establishing the trial court abused its discretion by denying relief. And to the extent he has raised new claims

Ferrell’s petition, because Ferrell is not a pleading defendant in an “of-right” post-conviction proceeding, *see* Ariz. R. Crim. P. 32.1, it was not required to conduct a fundamental-error review. *See State v. Smith*, 184 Ariz. 456, 458-59, 910 P.2d 1, 3-4 (1996). Indeed, Ferrell received such a review by this court, his appellate counsel having filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967).

for the first time on review, such as his claim that this trial judge has been biased against him, we will not address them. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court will not consider on review claims not raised below); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review must contain “issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review”). We grant his petition for review but deny relief.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge